

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:12-CV-717-FDW-DCK**

OTTO INDUSTRIES NORTH AMERICA, INC.,)

Plaintiff,)

v.)

THE PHOENIX INSURANCE COMPANY,)

Defendant.)

ORDER

THIS MATTER IS BEFORE THE COURT on “Defendant The Phoenix Insurance Company’s Motion To Withdraw Its Motion For Leave To Amend Case Management Order To Permit An Amendment To Assert An Additional Affirmative Defense And Counterclaim To Plaintiff’s Complaint” (Document No. 96) filed November 20, 2013. This motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and immediate review is appropriate. Having carefully considered the motion and the record, the undersigned will grant the motion.

Although the instant motion fails to specifically show that the Requirement of Consultation has been satisfied pursuant to Local Rule 7.1 (B), it does re-assert that “Plaintiff and Defendant have settled all matters in dispute between them.” (Document No. 96); see also (Document Nos. 94 and 95). The parties are expected to file a Stipulation of Dismissal on or before December 5, 2013. Id.

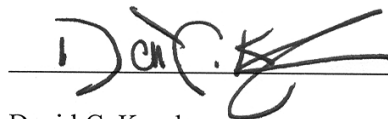
IT IS, THEREFORE, ORDERED that “Defendant The Phoenix Insurance Company’s Motion To Withdraw Its Motion For Leave To Amend Case Management Order To Permit An Amendment To Assert An Additional Affirmative Defense And Counterclaim To Plaintiff’s

Complaint” (Document No. 96) is **GRANTED**. The Clerk of Court is directed to term the pending “...Motion For Leave To Amend...” (Document No. 46).

IT IS FURTHER ORDERED that “Defendant The Phoenix Insurance Company’s Renewed Motion To Compel Appraisal And For Finding That Kevin Grudzien Is Not Impartial” (Document No. 54) be **DENIED AS MOOT**.

SO ORDERED.

Signed: November 20, 2013



David C. Keesler
United States Magistrate Judge

